

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JOHN STEVEN OLAUSEN,

Petitioner,

v.

ISIDRO BACA, et al.,

Respondents.

Case No. 3:15-cv-00525-MMD-VPC

ORDER

This closed action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by a Nevada state prisoner.

By order filed October 21, 2015, the Court dismissed this action without prejudice because petitioner failed to submit a proper application to proceed *in forma pauperis*. (ECF No. 4.) Judgment was entered on October 21, 2015. (ECF No. 5.)

On November 24, 2015, the Court granted petitioner's motion for relief from the order dismissing his case because of his failure to submit a proper *in forma pauperis* application. (ECF No. 8.) In the same order, the Court dismissed this case as a successive petition. Judgment was entered on November 24, 2015. (ECF No. 9.) Petitioner has filed a motion seeking reconsideration of the Court's order of November 24, 2015. (ECF No. 10.)

Where a ruling has resulted in final judgment or order, a motion for reconsideration may be construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J Multnomah County v.*

1 AC&S, Inc., 5 F.3d 1255, 1262 (9<sup>th</sup> Cir. 1993), *cert. denied* 512 U.S. 1236 (1994). Under  
2 Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order for the  
3 following reasons:

4 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly  
5 discovered evidence, that, with reasonable diligence, could not have been  
6 discovered in time to move for a new trial under Rule 59(b); (3) fraud  
7 (whether previously called intrinsic or extrinsic), misrepresentation, or  
8 other misconduct by an opposing party; (4) the judgment is void; (5) the  
judgment has been satisfied, released or discharged; it is based on an  
earlier judgment that has been reversed or vacated; or applying it  
prospectively is no longer equitable; or (6) any other reason that justifies  
relief.

9 A district court has discretion not to consider claims and issues that were not  
10 raised until a motion for reconsideration. *Hopkins v. Andaya*, 958 F.2d 881, 889 (9<sup>th</sup> Cir.  
11 1992). It is not an abuse of discretion to refuse to consider new arguments in a Rule  
12 60(b) motion even though “dire consequences” might result. *Schanen v. United States*  
13 *Dept. of Justice*, 762 F.2d 805, 807-08 (9<sup>th</sup> Cir. 1985). Moreover, motions for  
14 reconsideration are not justified on the basis of new evidence which could have been  
15 discovered prior to the court’s ruling. *Hagerman v. Yukon Energy Corp.*, 839 F.3d 407,  
16 413-14 (8<sup>th</sup> Cir. 1988); *see also E.E.O.C. v. Foothills Title*, 956 F.2d 277 (10<sup>th</sup> Cir. 1992).

17 A “habeas petitioner may move for relief from the denial of habeas under Rule  
18 60(b) so long as the motion is not the equivalent of a successive petition.” *Harvest v.*  
19 *Castro*, 531 F.3d 737, 745 (9<sup>th</sup> Cir. 2008) (citing *Gonzales v. Crosby*, 545 U.S. 524, 535-  
20 36 (2005)). Mere disagreement with an order is an insufficient basis for reconsideration.  
21 Nor should reconsideration be used to make new arguments or ask the Court to rethink  
22 its analysis. *See N.W. Acceptance Corp. v. Lynnwood Equip., Inc.*, 841 F.2d 918, 925-  
23 26 (9<sup>th</sup> Cir. 1988).

24 Rule 59(e) of the Federal Rules of Civil Procedure provides that any “motion to  
25 alter or amend a judgment shall be filed no later than 28 days after entry of the  
26 judgment.” Furthermore, a motion under Fed. R. Civ. P. 59(e) “should not be granted,  
27 absent highly unusual circumstances, unless the district court is presented with newly  
28 discovered evidence, committed clear error, or if there is an intervening change in the


1 controlling law.” *Herbst v. Cook*, 260 F.3d 1039, 1044 (9<sup>th</sup> Cir. 2001), quoting *McDowell*  
2 *v. Calderon*, 197 F.3d 1253, 1255 (9<sup>th</sup> Cir. 1999). Federal courts have determined that  
3 there are four grounds for granting a Rule 59(e) motion: (1) the motion is necessary to  
4 correct manifest errors of law or fact upon which the judgment is based; (2) the moving  
5 party presents newly discovered or previously unavailable evidence; (3) the motion is  
6 necessary to prevent manifest injustice; or (4) there is an intervening change in  
7 controlling law. *Turner v. Burlington Northern Santa Fe R. Co.*, 338 F.3d 1058 (9<sup>th</sup> Cir.  
8 2003).

9 In the instant case, this Court properly entered judgment dismissing this action as  
10 a successive petition in the order filed December 7, 2015. (ECF No. 8.) In his motion for  
11 reconsideration, petitioner has not identified any mistake, intervening change in  
12 controlling law, or other factor that would require vacating the judgment. Petitioner has  
13 not shown that manifest injustice resulted from dismissal of the action. Petitioner also  
14 has not presented newly discovered or previously unavailable evidence. Petitioner has  
15 failed to make an adequate showing under either Rule 59(e) or Rule 60(b) to justify  
16 granting his motion for reconsideration.

17 It is therefore ordered that petitioner’s motion for reconsideration (ECF No. 10) is  
18 denied.

19 It is further ordered that, because reasonable jurists would not find the dismissal  
20 of a successive petition to be debatable or wrong, a certificate of appealability is denied.

21 DATED THIS 6<sup>th</sup> day of September 2016.

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25 MIRANDA M. DU  
26 UNITED STATES DISTRICT JUDGE  
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